

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEREMIAS CASTRO,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

NO. CV 07-182 AGR

MEMORANDUM OPINION AND
ORDER

Jeremias Castro filed this action on January 10, 2007. On March 20, 2007, the case was transferred to Magistrate Judge Alicia G. Rosenberg. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before Magistrate Judge Rosenberg on March 29 and April 5, 2007. On November 16, 2007, the parties filed a Joint Stipulation ("JS") that addressed the disputed issues. The Court has taken the matter under submission without oral argument.

Having reviewed the entire file, the Court remands for further proceedings consistent with this Opinion.

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I.

PROCEDURAL BACKGROUND

On November 20, 2003, Castro filed applications for disability insurance and supplemental security income benefits, which the Commissioner initially denied. A.R. 14. The Administrative Law Judge (“ALJ”) conducted a hearing on September 26, 2005, at which Castro (through an interpreter) and a vocational expert (“VE”) testified. A.R. 625-42. On January 19, 2006, the ALJ issued a decision denying benefits. A.R. 14-20. On November 15, 2006, the Appeals Council denied Castro’s request for review. A.R. 5-8.

This lawsuit followed.

II.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

“Substantial evidence” means “more than a mere scintilla but less than a preponderance – it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion.” *Moncada*, 60 F.3d at 523. In determining whether substantial evidence exists to support the Commissioner’s decision, the Court examines the administrative record as a whole, considering adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the evidence is susceptible to more than one rational interpretation, the Court must defer to the Commissioner’s decision. *Moncada*, 60 F.3d at 523.

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1 III.

2 **DISCUSSION**

3 **A. Pertinent Legal Standards**

4 **1. Definition of Disability**

5 “A person qualifies as disabled, and thereby eligible for such benefits, only
6 if his physical or mental impairment or impairments are of such severity that he is
7 not only unable to do his previous work but cannot, considering his age,
8 education, and work experience, engage in any other kind of substantial gainful
9 work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20,
10 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003) (citation and internal quotation
11 marks omitted).

12 **B. The ALJ’s Findings**

13 The ALJ found that Castro had the following severe impairments: cervical
14 and lumbar muscular strain, residuals of frozen right shoulder/impingement
15 syndrome, bilateral carpal tunnel syndrome, and depression. A.R. 19. Castro
16 had the residual functional capacity to perform “light simple routine work
17 activities,” further restricted by “mild non-exertional limitations in activities of daily
18 living, social functioning, and is moderately limited in concentration.” A.R. 19.
19 Based on his residual functional capacity, the ALJ found that Castro could
20 perform some of his past relevant work and other work. A.R. 18, 19.

21 **C. Report of Treating Psychiatrist Thomas Curtis**

22 An opinion of a treating physician is given more weight than the opinion of
23 non-treating physicians. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). When
24 a treating physician’s opinion is contradicted by another doctor, “the ALJ may not
25 reject this opinion without providing specific and legitimate reasons supported by
26 substantial evidence in the record. This can be done by setting out a detailed
27 and thorough summary of the facts and conflicting clinical evidence, stating his

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1 interpretation thereof, and making findings.” *Id.* at 632 (citations and internal
2 quotation marks omitted).

3 Plaintiff argues that the ALJ failed to comply with the legal standard in
4 rejecting Dr. Curtis’s opinion. JS 6.

5 Dr. Curtis, a psychiatrist, treated Castro in connection with a workplace
6 injury¹ arising in 1999 and 2000; the last day Castro worked was May 19, 2000.
7 A.R. 377. Dr. Curtis first treated Castro on December 5, 2003. A.R. 377. He
8 diagnosed him with “depressive disorder not otherwise specified with anxiety.”
9 A.R. 377. He prescribed ProSom,² BuSpar,³ and Wellbutrin.⁴ A.R. 377. In
10 addition to December 5, 2003, Dr. Curtis also treated Castro on December 8,
11 2003; January 5, 2004; January 12, 2004; January 19, 2004; January 20, 2004;
12 January 26, 2004; February 2, 2004; February 20, 2004; March 1, 2004; March 8,
13 2004; March 15, 2004; March 22, 2004; March 23, 2004; April 5, 2004; April 16,
14 2004; and April 20, 2004. A.R. 354-75.

15 On March 17, 2004, Dr. Curtis wrote a comprehensive psychiatric
16 evaluation report. A.R. 380-405. Dr. Curtis indicated that Castro had been
17 receiving “necessary psychiatric treatment,” that “[f]urther treatment services will
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20 ¹ Castro was referred to Dr. Curtis by Castro’s treating physician and by
21 Castro’s workers’ compensation attorney. A.R. 381.

22 ² ProSom, the brand name of Estazolam, is normally prescribed for short-
23 term insomnia. Physician’s Desktop Reference (available at
[http://www.pdrhealth.com/drugs/rx/rx-mono.aspx?contentFileName=Pro1359.htm
l&contentName=ProSom&contentId=473](http://www.pdrhealth.com/drugs/rx/rx-mono.aspx?contentFileName=Pro1359.html&contentName=ProSom&contentId=473)).

24 ³ BuSpar, the brand name of Buspirone hydrochloride, is normally
25 prescribed for anxiety disorders. Physician’s Desktop Reference (available at
[http://www.pdrhealth.com/drugs/rx/rx-mono.aspx?contentFileName=Bus1059.ht
ml&contentName=BuSpar&contentId=94](http://www.pdrhealth.com/drugs/rx/rx-mono.aspx?contentFileName=Bus1059.html&contentName=BuSpar&contentId=94)).

26 ⁴ Wellbutrin, the brand name of Bupropion hydrochloride, is normally
27 prescribed for major depression. Physician’s Desktop Reference (available at
[http://www.pdrhealth.com/drugs/rx/rx-mono.aspx?contentFileName=Wel1488.htm
l&contentName=Wellbutrin+SR&contentId=638](http://www.pdrhealth.com/drugs/rx/rx-mono.aspx?contentFileName=Wel1488.html&contentName=Wellbutrin+SR&contentId=638)).

1 be required on an as-needed basis,” and that “an estimate of permanent and
2 stationary⁵ residuals can now be made.”

3 Dr. Curtis described the history of the workplace injury. Castro began
4 working at Chef America in 1994. He was a machine operator. In 1997, he had
5 an on-the-job injury in which a heavy bowl crushed his right hand. A.R. 384. He
6 injured his right wrist in 1998 when lifting an 80-pound bag and pouring it into a
7 mixing bowl. A.R. 385. The injury was described as tendonitis and later as
8 carpal tunnel syndrome. A.R. 385. He was off work for about a year. In
9 February of 2000 he had a third workplace injury in which he hurt his neck and
10 back trying to unstick a conveyor belt. A.R. 385. The following day he injured
11 himself a fourth time when pushing a cart; he again felt pain in his neck. A.R.
12 385. His supervisor “retaliated” against Castro for reporting the injuries. A.R.
13 385-86. The company doctor placed Castro on disability in May of 2000. A.R.
14 386.

15 As a result of the physical injuries and stress at work, Castro started
16 experiencing “intensely disturbing emotional complications of physical pain and
17 disability including depression, anxiety, and feelings of agitation and emptiness.”
18 A.R. 386. In addition to Dr. Curtis’s treatment, Castro received individual and
19 group psychotherapy.⁶ A.R. 386. Nonetheless, Castro continued to have
20 physical pain that caused him to “remain[] depressed and anxious.” A.R. 387.

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22 ⁵ In the workers’ compensation context, “[p]ermanent and stationary
23 status’ is the point when the employee has reached maximal medical
24 improvement, meaning his or her condition is well stabilized, and unlikely to
25 change substantially in the next year with or without medical treatment.” *Zenith*
26 *Ins. Co. v. Workers’ Comp. Appeals Bd.*, 159 Cal. App. 4th 483, 488 n.3, 71 Cal.
Rptr. 3d 724 (2008) (citation omitted). “Permanent and stationary status refers to
medical rehabilitation from an injury, not ability to work.” *Id.* (citations and internal
quotation marks omitted).

27 ⁶ As of September 26, 2005, Castro testified that he was still receiving
28 therapy about once a month.

1 Based on a mental status exam, Dr. Curtis found Castro be "withdrawn,
2 depleted and tired with his psychological energy diminished by the drain of pain,
3 sleep problems, insecurity, anxiety, worry, depression and fear due to continuing
4 disability." A.R. 391. Castro "demonstrated diminished cognitive functioning in
5 the clinical interview situation. He was noted to be defective in recall, distracted,
6 and revealing of defects in concentration, and short-term memory." A.R. 391.

7 According to the psychological test results, Castro had severe anxiety, a
8 moderate level of hopelessness, "significant concerns about somatic functioning,"
9 and major or severe depression. A.R. 393-97. Dr. Curtis summarized the test
10 results as "residual abnormal levels of anxiety, hopelessness and depression with
11 low energy, cognitive impairment, guilt, low self-esteem, social introversion,
12 pessimism, irritability and sadness." A.R. 397.

13 Dr. Curtis completed a "work function" rating Castro's limitations in the
14 workplace in eight categories: (1) "comprehend and follow instructions" (slight);
15 (2) "perform simple and repetitive tasks" (slight); (3) "maintain work pace" (slight
16 to moderate); (4) "perform complex and varied tasks" (slight to moderate); (5)
17 "relate to other people" (slight to moderate); (6) "influence people" (slight); (7)
18 "generalizations, evaluations or decisions" (slight); and (8) "accept and carry out
19 responsibility" (slight). A.R. 402. Overall, Dr. Curtis rated Castro at "slight-to-
20 moderate degree of emotional impairment at about the 40% standard level." A.R.
21 401. Dr. Curtis recommended future psychiatric treatment for the rest of Castro's
22 life. A.R. 404-05.

23 The ALJ noted Dr. Curtis's report and the functional limitations. A.R. 16.
24 The ALJ rejected the report because it "relied primarily on the claimant's self-
25 described complaints and not on any objective mental status examination
26 findings." A.R. 16. The ALJ also found that the report lacked "objective evidence
27 to support this functional assessment." A.R. 16. Finally, the ALJ found that the
28 report's findings "did not appear to take into account the other factors which must

1 be considered . . . , such as the other medical reports and opinions as well as the
2 vocational factors involved.” A.R. 16.

3 The ALJ's reasons for rejecting Dr. Curtis's report are not supported by the
4 record. First, Dr. Curtis performed a mental status examination. A.R. 391-92.
5 The fact that the doctor concluded that Castro's subjective complaints correlated
6 well to the doctor's own findings does not mean that the doctor “relied primarily
7 on the claimant's self-described complaints,” as reported by the ALJ. A.R. 16,
8 391. Second, the ALJ's finding that Dr. Curtis's report lacked “objective
9 evidence” is contradicted by the record. Dr. Curtis described at great length the
10 battery of psychological tests he administered, including the various tests in Beck
11 Anxiety Inventory and the Personality Assessment Inventory, the results
12 themselves, and his interpretation of those results. A.R. 392-97. Third, the only
13 other medical reports considered by the ALJ involved Castro's physical injuries,
14 not his depression. A.R. 16-17. Thus, Dr. Curtis's report is unrebutted by any
15 other evidence considered by the ALJ.

16 Accordingly, because the ALJ failed to set forth legitimate reasons
17 supported by the record for rejecting Dr. Curtis's report, the report must be
18 credited. *See Widmark v. Barnhart*, 454 F.3d 1063, 1069 (9th Cir. 2006).

19 However, this case is remanded because additional testimony must be
20 elicited from the VE. For the purpose of posing a hypothetical, the ALJ referred
21 the VE to the physical limitations set forth at pages 416-420 of the record, to
22 which he added that Castro was “limited to simple, routine tasks.” A.R. 639. On
23 that basis, the VE found the only relevant past work Castro could perform was his
24 assembly job, but he could also perform various other jobs in the economy. A.R.
25 639-40. Castro's counsel asked the VE if he was familiar with the “workers' comp
26 mental health restrictions,” and the VE said no. A.R. 641. Counsel then asked
27 what if they were “slight to moderate?” A.R. 641. The VE said he would need a
28 definition. A.R. 641. Counsel stated the following hypothetical limitation:

1 If a person relating to other people, that means getting along with
2 coworkers, peers, negotiating, explaining, responding, responding
3 well to evaluation or criticism, and that was inhibited, let's say 25
4 percent of the time. Would that affect any of these jobs? In other
5 words, he couldn't get along with coworkers or peers 25 percent of
6 the time.

7 A.R. 641. The VE said that "if someone were limited with that percentage, I
8 would say no." A.R. 641. Counsel asked "[w]hat about maintaining work pace 25
9 percent of the time." A.R. 641. The VE said that "most unskilled jobs require you
10 to work at an industrial pace. If you're 25 percent restricted to that, then that
11 would not meet industrial pace." A.R. 641. Thus, Castro's hearing counsel
12 translated Dr. Curtis's findings of slight-to-moderate in work pace and relating to
13 other people (A.R. 402) as a 25% restriction. This is not an accurate reflection of
14 Dr. Curtis's findings.

15 Because the ALJ rejected Dr. Curtis's findings, he did not explain them, as
16 required. See *Coria v. Heckler*, 750 F.2d 245, 248 (3d Cir. 1984) ("[T]he ALJ
17 should evaluate the objective medical findings set forth in the medical reports for
18 submission with the worker's compensation claim by the same standards that
19 s/he uses to evaluate medical findings in reports made in the first instance for the
20 Social Security claim"); see also *Lester v. Chater*, 81 F.3d 821, 832 (9th Cir.
21 1995) (the ALJ erred in rejecting a physician's reports because they were "clearly
22 obtained by the claimant's attorney for the purposes of litigation" and stating that
23 "[t]he purpose for which medical reports are obtained does not provide a
24 legitimate basis for rejecting them"); see also *Desrosiers v. Secretary of Health &*
25 *Human Servs.*, 846 F.2d 573, 576 (9th Cir. 1988) ("The categories of work under
26 the Social Security disability scheme are measured quite differently."); *Booth v.*
27 *Barnhart*, 181 F. Supp. 2d 1099, 1106 (C.D. Cal. 2002) ("The ALJ must 'translate'
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1 terms of art contained in such medical opinions into the corresponding Social
2 Security terminology”).

3 The eight categories used by Dr. Curtis correspond to work functions in the
4 Table for Rating Psychiatric Disabilities (“Table”) found in the 1997 version of the
5 Schedule for Rating Permanent Disabilities (“Schedule”) (available at
6 <http://www.dir.ca.gov/dwc/PDR1997.pdf>).⁷ Schedule at 2-3; see also *Payan v.*
7 *Chater*, 959 F. Supp. 1197, 1204 (C.D. Cal. 1996) (“Although the ALJ noted that
8 Dr. Braverman examined the plaintiff in relation to plaintiff’s workers’
9 compensation claim, the ALJ failed to properly consider Dr. Braverman’s use of
10 workers’ compensation terminology.”). The Table lists of eight work functions,
11 assigns a Work Function Impairment Value” (“WFIV”) based on a scale from
12 minimal to severe, and places each work function in Group I (Work Functions 1-
13 3) or Group II (Work Functions 4-8). Schedule at 2-3. Thus, each work function,
14 by itself, has the following WFIV (value in parentheses): (1) “comprehend and
15 follow instructions” (10%); (2) “perform simple and repetitive tasks” (10%); (3)
16 “maintain work pace” (20%); (4) “perform complex and varied tasks” (8%); (5)
17 “relate to other people” (19%); (6) “influence people” (2%); (7) “generalizations,
18 evaluations or decisions” (3%); and (8) “accept and carry out responsibility” (2%).
19 *Id.*

20 The Schedule also prescribes a method for calculating the overall WFIV
21 which, in this instance, is the method expressed in Rating Calculation IV
22 (“impairments within both Groups I and II”) because Castro was rated as impaired
23 in all work functions. *Id.* Calculating IV(a) provides a Group I Amount of 30% (20
24 + (.5 * (10+10)). *Id.* Calculating IV(b) provides a Group II Amount of 22% (19 +
25 (.2 * (8+2+3+2)). *Id.* To combine the results of the two groups under IV(c), the
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27 ⁷ Cal. Labor Code § 4660 “governs how the percentage of permanent
28 disability is determined.” *Zenith*, 159 Cal. App. 4th at 491 (footnote omitted). The
schedule in effect before January 1, 2005, was the 1997 schedule. *Id.* at 492.

1 correct formula $[30 + ((.45 - (30/300) * 22))]$ yields an unrounded result of 37.7%.
2 *Id.* Rounding that to the nearest whole rating yields the 40% standard provided
3 by Dr. Curtis. See *id.* note 3.

4 Thus, the hypothetical asked by Castro's counsel at the hearing was
5 inaccurate. The mental limitations that must be added to the hypothetical asked
6 of the VE on remand are as follows:

7 Assume that Castro's psychiatric limitations in the workplace are (1) he has
8 a 10% limitation in his ability to comprehend and follow instructions; (2) he has a
9 10% limitation in his ability to perform simple and repetitive tasks; (3) he has a
10 20% limitation in his ability to maintain work pace appropriate to a given work
11 load; (4) he has a 8% limitation in his ability to perform complex and varied tasks;
12 (5) he has a 20% limitation in his ability to relate to other people beyond giving
13 and receiving instructions; (6) he has a 2% limitation in his ability to influence
14 people; (7) he has a 3% limitation in his ability to make generalizations,
15 evaluations or decisions without immediate supervision; and (8) he has a 2%
16 limitation in his ability to accept and carry out responsibility for direction, control
17 and planning. Combining these limitations, Castro has a 40% limitation in his
18 abilities in the workplace.⁸

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27 ⁸ Because the Court is remanding so that the ALJ may pose the correct
28 hypothetical to the VE, the Court need not address Castro's second argument,
that the ALJ's hypothetical was incomplete. JS 14.

1 IV.

2 **ORDER**

3 IT IS HEREBY ORDERED that the matter is remanded at Steps 4 and 5 to
4 elicit further testimony from the vocational expert as described above.

5 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
6 Order and the Judgment herein on all parties or their counsel.

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9 DATED: April 17, 2008


ALICIA G. ROSENBERG
United States Magistrate Judge